

16A C.J.S. Constitutional Law § 788

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Constitutional Law

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PART III. Overview of Protected Personal Rights and Freedoms; Police Power

IX. Personal, Civil, and Political Rights and Freedoms

C. Personal Liberty

3. Right to Travel

a. In General

§ 788. International travel

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West's Key Number Digest

West's Key Number Digest, Constitutional Law  1284

The courts are not in agreement as to whether the right to international travel is a fundamental right.

It has been said that the freedom to travel out of the country is a fundamental constitutional right or liberty,¹ that restrictions on international travel must be carefully tailored to serve a substantial and legitimate government interest,² and that a United States citizen's constitutional right to travel abroad may not be curtailed by the state in the absence of criminal conviction and penal incarceration.³

However, it has also been said that the freedom of international travel, although a protected and valued right,⁴ is no more than an aspect of the liberty interest protected by due process⁵ and is not a fundamental right protected by the Constitution.⁶ Therefore, legislation which is said to infringe that freedom is not to be judged by the same standard

applied to laws that penalize the right of interstate travel,⁷ and an infringement of the freedom of international travel violates substantive due process requirements only if it is wholly irrational.⁸

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Footnotes

1 U.S.—U.S. v. Shaheen, 445 F.2d 6 (7th Cir. 1971); In re Aircrash In Bali, Indonesia on April 22, 1974, 684 F.2d 1301, 11 Fed. R. Evid. Serv. 875 (9th Cir. 1982).

2 U.S.—In re Aircrash In Bali, Indonesia on April 22, 1974, 684 F.2d 1301, 11 Fed. R. Evid. Serv. 875 (9th Cir. 1982).

Invalid injunction

An injunction issued in a postdivorce proceeding which permanently enjoined a former wife from traveling outside the continental United States without the former husband's consent, in response to the husband's petition to modify the parent-child relationship after the wife had taken the child to Mexico, violated the mother's constitutional right to travel; the injunction was overly broad, unreasonably restrictive, and unrelated to either the child's best interest or international child-abduction prevention.

Tex.—Arredondo v. Betancourt, 383 S.W.3d 730 (Tex. App. Houston 14th Dist. 2012).

3 N.Y.—Estate of Sanchez, 126 Misc. 2d 199, 481 N.Y.S.2d 601 (Sur. Ct. 1984).

4 Okla.—Edmondson v. Pearce, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).

5 U.S.—Califano v. Aznavorian, 439 U.S. 170, 99 S. Ct. 471, 58 L. Ed. 2d 435 (1978); Duncan v. Goedeke and Cleasey, 837 F. Supp. 846 (S.D. Tex. 1993).

Okla.—Edmondson v. Pearce, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).

6 U.S.—Eunique v. Powell, 302 F.3d 971 (9th Cir. 2002); Jack v. Trans World Airlines, Inc., 854 F. Supp. 654, 29 Fed. R. Serv. 3d 896 (N.D. Cal. 1994); Dearth v. Holder, 893 F. Supp. 2d 59 (D.D.C. 2012); Duncan v. Goedeke and Cleasey, 837 F. Supp. 846 (S.D. Tex. 1993).

7 U.S.—Califano v. Aznavorian, 439 U.S. 170, 99 S. Ct. 471, 58 L. Ed. 2d 435 (1978).

Not same as interstate travel

U.S.—Williams v. Wisconsin, 336 F.3d 576 (7th Cir. 2003).

Seizure of passport

U.S.—Duncan v. Goedeke and Cleasey, 837 F. Supp. 846 (S.D. Tex. 1993).